

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

MOISES GONZALEZ, as PR of the Estate
of Blanca Gonzalez,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CAUSE NO. 1:18-CV-3027-

COMPLAINT

COMES now Moises Gonzalez, as Personal Representative of the Estate of Blanca Gonzalez, by and through the undersigned attorneys, and brings this Complaint for Personal Injuries and Wrongful Death caused by Defendant as alleged fully herein.

This is an action arising under the Federal Tort Claims Act, 28 U.S.C. §2671, et seq.

JURISDICTION

1. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §1346(b) and 28 U.S.C. §1331.

VENUE

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1402(b), as all or a substantial part of the acts and/or omissions that are the basis of this lawsuit occurred at Yakima Valley Farm Workers Clinic, in Toppenish, Washington, which is within the Eastern District of Washington, and as personal representative, Moises Gonzalez, resides within the Eastern District of Washington.

PARTIES

3. Plaintiff is Moises Gonzalez, as Personal Representative of the Estate of Blanca Gonzalez, his mother. At all times material, Moises Gonzalez resided in Wapato, Washington located in Yakima County.

4. Beneficiaries of the Estate include Xavier Gonzalez, Blanca's husband of 37 years and their adult children, Moises Gonzalez, Arnulfo Gonzalez, and Rosa Gonzalez. Xavier Gonzalez, Moises Gonzalez, Arnulfo Gonzalez and Rosa Gonzalez are beneficiaries, and/or persons on whose behalf actions may be brought under RCW 4.20.020, 4.20.046, and 4.20.060.

5. Defendant United States of America is a sovereign entity sued pursuant to 28 U.S.C. §§ 2674 and 1346(b)(1), for injury and death caused by the negligent and wrongful acts and omissions of persons and/or entities deemed to be employees and/or agents of the United States of America while acting within the scope of their office or employment.

6. On information and belief, Yakima Valley Farm Workers Clinic ("YVFWC") is a Washington corporation with its principal place of business in Toppenish, Washington. YVFWC is, and was at all times

1 relevant, an entity receiving federal funds pursuant to 28 U.S.C. § 254(b). All health care
2 practitioners employed by such entities, including the health care practitioners treating
3 Blanca Gonzalez, and any contractor of such an entity who is a physician or license or
4 certified health care practitioner, are deemed to be employees of the Public Health Service,
5 for purposes of the FTCA. 28 U.S.C. § 233.
6

7 **PRESENTATION OF FEDERAL TORT CLAIM**

8 7. Plaintiff has fully complied with the provisions of 28 U.S.C. § 2875 as
9 follows:

10 8. On or about October 6, 2015, Blanca Gonzalez filed a federal tort claim by
11 mailing her claim to the Office of the General Counsel, in Washington, D.C. See attached
12 **Exhibit 1**. On November 17, 2015 receipt of the claim was acknowledged by The Office
13 of the General Counsel. **Exhibit 2**.
14

15 9. On December 27, 2015 Blanca Gonzalez died. **Exhibit 3**.

16 10. Plaintiff Moises Gonzalez, as Personal Representative of the Estate of
17 Blanca Gonzalez, herein filed a federal tort claim on behalf of the statutory beneficiaries by
18 mailing his claim to the Office of the General Counsel, in Washington, D.C on June 15,
19 2016. **Exhibit 4**. By letter dated April 27, 2017, receipt of the claim was acknowledged
20 by the Office of the General Counsel. **Exhibit 5**.
21

22 11. On August 17, 2017, The Department of Health and Human Services issued
23 a final determination denying the claim. **Exhibit 6**. Accordingly, suit in this court is
24 proper pursuant to 45 CFR 35.2(b) and 28 U.S.C. 2675(a).
25
26

FACTS

12. On or about October 21, 2013, Blanca Gonzalez went to Yakima Valley Farm Worker's Clinic in Toppenish, Washington. She complained of significant rectal pain and discomfort, especially on the right side of her rectum.

13. Ms. Gonzalez was seen by a physician at YVFWC who had previously seen her on several occasions. The physician was familiar with Ms. Gonzalez' medical history, including her diagnosis of diabetes mellitus, which he had treated and was continuing to treat at the time of the October 21, 2013 visit.

14. The YVFWC physician diagnosed hemorrhoids, and a possible early perianal abscess. He recommended sitz baths, stool softeners, and suppositories. He prescribed the antibiotic Clindamycin. Blanca Gonzalez was told that the prescription would be called into the YVFWC pharmacy. She was told that she should follow up in one month.

15. On October 23, 2013, she contacted YVFWC because she was feeling ill and feverish with increasing pain. YVFWC had not called in the prescription and/or the YVFWC pharmacy had not dispensed the antibiotic prescription. At that time, another YVFWC physician called in the prescription to the YVFWC pharmacy. Once dispensed, Ms. Gonzalez began taking the medication immediately.

16. On October 28, 2013, Blanca Gonzalez went to the emergency room at Yakima Memorial Hospital. Her symptoms included edema and redness in her upper right thigh and genitalia, and reported chills, and fever over the preceding days. She was diagnosed with severe soft tissue infection and necrotizing fasciitis, Fournier's gangrene, in the area of her upper right thigh, pelvis, and gluteus, along with severe cellulitis.

1 17. Because of the severity of her condition and the need for specialized
2 treatment, Yakima Memorial Hospital had Ms. Gonzalez airlifted to Harborview Medical
3 Center in Seattle. Upon arrival at Harborview in the evening of October 28, 2013, she was
4 immediately taken into surgery for debridement of the necrotic tissue in the area of her labia,
5 right thigh and gluteus muscles, and admitted to ICU.
6

7 18. Over the next several weeks, she underwent multiple debridement and
8 grafting procedures at Harborview. These surgeries resulted in the removal of significant
9 portions of her right buttock and leg muscles.

10 19. As a result of these injuries, Blanca Gonzalez continued to suffer illnesses and
11 infections, including but not limited to hospitalization for cellulitis in her right inner thigh in
12 2014. Because of her medical condition resulting from her treatment for cellulitis and
13 gangrene in October 2013, Blanca Gonzalez was medically unable to undergo the necessary
14 surgical procedures medical procedures to address her diagnosis of Cushing's Syndrome.
15

16 20. In December 2015, Blanca Gonzalez was again admitted to Yakima Valley
17 Memorial Hospital with edema and cellulitis in her thigh, and a diagnosis of septicemia.
18 Ms. Gonzalez died on December 27, 2015.

19 **NEGLIGENCE AND CAUSATION**

20 21. The health care providers and treaters at YVFWC owed Ms. Gonzalez a duty
21 to comply with the standard of care for their profession in the State of Washington. This is a
22 duty to exercise the degree of skill, care, and learning expected of a reasonably prudent
23 health care provider in the State of Washington acting in the same or similar circumstances at
24 the time of the care and treatment in question. Failure to exercise such skill, care or learning
25
26

1 constitutes a breach of the standard of care, and is negligence.

2 22. The health care providers and treaters at YVFWC breached the standard of
3 care, including but not limited to, one or more of the following ways:

4 a. Failure to properly treat and prescribe proper medication and follow-
5 up treatment at the time of her initial visit on October 21, 2013. Impaired immunity from
6 diabetes increases the susceptibility to infection, including perianal abscesses and Fournier's
7 Gangrene;

8
9 b. Failure to prescribe the appropriate antibiotics on October 21, 2013,
10 given her condition, medical history and presenting symptoms;

11 c. Failure to call in the prescription on October 21, 2013, and/or failure to
12 dispense the prescription on October 21;

13 d. Failure to properly treat and prescribe proper medication and follow-
14 up treatment after Ms. Gonzales called in on October 23, 2013.

15
16 23. The injuries to Ms. Gonzalez which she suffered on and after October 21,
17 2013, and her subsequent death on December 27, 2015, were proximately and probably
18 caused by the negligence of YVFWC, and the health care providers and treaters at YVFWC.

19 24. Defendant's negligence proximately caused plaintiff's damages.

20 **CLAIMS**

21
22 25. Medical Negligence. Defendant, by and through its employees and agents,
23 failed to exercise the degree of care, skill and learning expected of reasonably prudent health
24 care providers in the same profession or class in the State of Washington acting in the same
25 or similar circumstances. Such conduct proximately caused severe injuries to and the death
26

1 of Blanca Gonzalez. Such conduct establishes claims under RCW 7.70 and other applicable
2 law.

3 26. Corporate Negligence. Defendant, by and through its employees and agents,
4 is liable for the breach of the independent non-delegable duty owed by a healthcare facility
5 directly to its patient.
6

7 27. Wrongful Death and Survival Claims. Moises Gonzalez asserts all available
8 survival and wrongful death claims allowed under the law on behalf of the statutory
9 beneficiaries of Blanca Gonzalez, including but not limited to, RCW 4.20.010, 4.20.020,
10 4.20.046, and 4.20.060.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant as
13 follows:
14

- 15 1. An award of general damages in an amount to be proven at trial;
- 16 2. An award of special damages in an amount to be proven at trial;
- 17 3. All damages permitted under the wrongful death and survival statutes of the
18 State of Washington;
- 19 4. Plaintiff's costs, disbursements and prejudgment interest as allowed by law;
- 20 5. For such other and further relief as the Court deems just.
21

22 DATED this 13th day of February, 2018.

23 LUVERA LAW FIRM

24 /s/ Andrew Hoyal

25 ANDREW HOYAL, WSBA #21439

26 701 Fifth Avenue, Suite 6700

Seattle, WA 98104

Phone: 206/467-6090

Email: Andy@LuveraLawFirm.com

Exhibit 1

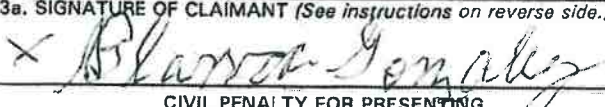
CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: US Dept of Health & Human Svs - Office of the General Counsel General Law Division - Claims & Employment Law Branch 330 C Street, SW, Switzer Building, Suite 2600 Washington, DC 20201			2. Name, Address of claimant and claimant's personal representative, if any. <i>(See instructions on reverse.) (Number, street, city, State and Zip Code)</i> Blanca Gonzalez c/o Luvera Law Firm 701 Fifth Avenue, Suite 6700 Seattle, WA 98104		
3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. or P.M.)	
<input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN		married	October 17, 2013	9:00 pm	
8. Basis of Claim <i>(State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)</i> Claimant brings this claim pursuant to 42 U.S.C. Section 233. Yakima Valley Farm Worker's Clinic ("YVFWC") is a federally qualified health center which can be sued under the FTCA. On October 17, 2013 Blanca Gonzalez was seen at YVFWC for rectal pain. She was examined and told she had hemorrhoids. On October 28 she went to the emergency room at Yakima Memorial. She was diagnosed with necrotizing fasciitis. On October 28, Blanca was flown to Harborview Medical Center in Seattle. Blanca had several surgeries. In addition to cleaning out infection and undergoing skin grafts, she had part of her right buttock muscle and leg muscle removed. See attached medical records.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT <i>(Number, street, city, State, and Zip Code)</i>					
None					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. <i>(See instructions on reverse side.)</i>					
None					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.					
See #8.					
11. WITNESSES					
NAME		ADDRESS <i>(Number, street, city, State, and Zip Code)</i>			
YVFWC Personnel		518 West First Avenue Toppinish, WA 98948			
Family members		Addresses to be provided			
12. (See instructions on reverse) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL <i>(Failure to specify may cause forfeiture of your rights.)</i>		
	15,000,000.00		15,000,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT <i>(See instructions on reverse side.)</i>			13b. Phone number of signatory	14. DATE OF CLAIM	
			(509) 877-6469	9-27-15	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. <i>(See 31 U.S.C. 3729.)</i>			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. <i>(See 18 U.S.C. 287, 1001.)</i>		

Exhibit 2



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel
General Law Division

Claims Office
330 C Street, SW
Switzer Building - Suite 2600
Washington, DC 20201

NOV 17 2015

RECEIVED

NOV 23 2015

Luvera Law Firm

Luvera Law Firm
701 Fifth Avenue, Suite 6700
Seattle, WA 98104

Re: Administrative Tort Claim of Blanca Gonzalez - Claim No. 2016-0021

To Whom It May Concern:

This will acknowledge receipt of your client's administrative tort claim which alleges. *inter alia*, that on October 17, 2013, unspecified personnel and the Yakima Valley Farm Worker's Clinic, located in Toppenish, WA, negligently diagnosed her with hemorrhoids. Your client's claim was received in the Claims Office, Office of the General Counsel, in Washington, DC, on October 13, 2015.

In order to evaluate your client's claim, please provide the following substantiating evidence to this office, at the address above, as soon as possible:

1. **Three hard copies or 3 CDs containing any and all private medical records, if any, including readable copies of the Yakima Valley Memorial Hospital records**, pertinent to your client's allegations and her present condition.
2. Itemized bills for medical and hospital expenses incurred, or itemized receipts of payment for such expenses.
3. A written report by the attending physician for Blanca Gonzalez setting forth the nature and extent of the injury, nature and extent of treatment, and her prognosis.
4. If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.
5. Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.
6. Evidence of your authority to present a claim on behalf of Blanca Gonzalez.

Page 2

Please reference the assigned claim number on all correspondence forwarded to this office.

As all mail delivered to federal government buildings is x-rayed/radiated, and is often damaged in the process, please forward the requested evidence via FedEx, UPS, or DHL, to the address above.

Please be advised that all evidence must be furnished by the claimant within a reasonable time. By operation of 45 CFR 35.4(d), a claimant's failure to furnish evidence necessary to a determination of his or her claim within 3 months after a request for such evidence has been made, may be deemed an abandonment of the claim. Further, a claimant's failure to provide requested evidence during the administrative claim process may result in a finding that his or her administrative remedies have not been exhausted, even if suit is filed more than 6 months after the filing of the administrative claim.

See Swift v. United States. 614F.2d812 (1st Cir.1980).

Upon completion of the review process, you will be notified of our determination in writing. However, should the 6-month statute expire before the completion of the review process, your client may consider the claim deemed denied and file suit in the appropriate U.S. District Court (45 CFR 35.2(b) and 28 U.S.C. 2675(a)).

Due to the high volume of claims filed with this office, we are unable to provide information pertinent to the status of your client's claim until completion of the review process.

Thank you for your cooperation in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Dorothea P. Koehler", written in a cursive style.

Dorothea P. Koehler
Paralegal Specialist

Exhibit 3

STATE OF WASHINGTON DEPARTMENT OF HEALTH

CERTIFICATE OF DEATH

CERTIFICATE NUMBER: 2015-038477

LOCAL FILE NUMBER: 1849

DATE ISSUED: 01/08/2016

FEE NUMBER: 3907022322

GIVEN NAMES: BLANCA R
LAST NAME: GONZALEZCOUNTY OF DEATH: YAKIMA
DATE OF DEATH: DECEMBER 27, 2015
HOUR OF DEATH: 05:05 P.M.
SEX: FEMALE
AGE: 61 YEARS

SOCIAL SECURITY NUMBER: [REDACTED]

HISPANIC ORIGIN: MEXICAN
RACE: MEXICANBIRTHDATE: [REDACTED]
BIRTHPLACE: PENJAMO, MEXICOMARITAL STATUS: MARRIED
SPOUSE: JAVIER GONZALEZOCCUPATION: AGRICULTURE
INDUSTRY: AGRICULTURE
EDUCATION: 6 YEARS
US ARMED FORCES: NOINFORMANT: MOISES GONZALEZ
RELATIONSHIP: SON
ADDRESS: [REDACTED]PLACE OF DEATH: HOSPICE FACILITY
FACILITY OR ADDRESS: COTTAGE IN THE MEADOW
CITY, STATE, ZIP: YAKIMA, WASHINGTON 98908RESIDENCE STREET: 4840 LATERAL A ROAD
CITY, STATE, ZIP: WAPATO, WASHINGTON 98951
INSIDE CITY LIMITS: NOCOUNTY: YAKIMA
TRIBAL RESERVATION: YAKAMA NATION
LENGTH OF TIME AT RESIDENCE: 10 YEARSFATHER/PARENT: J MARCELINO REYES
MOTHER/PARENT: ELVIRA RAMIREZMETHOD OF DISPOSITION: CREMATION
PLACE OF DISPOSITION: TERRACE HEIGHTS CREMATORY
CITY, STATE: YAKIMA, WA
DISPOSITION DATE: JANUARY 04, 2016FUNERAL FACILITY: MERRITT FUNERAL HOME INC
ADDRESS: 218 WEST THIRD ST
CITY, STATE, ZIP: WAPATO WA 98951
FUNERAL DIRECTOR: ROBERT A. EATON

PHOTO COPY

CAUSE OF DEATH:

- A. SEPTICEMIA
INTERVAL: APPROX 1 WEEK
- B. CELLULITIS AND PNEUMONIA
INTERVAL: APPROX 1 WEEK
- C. [REDACTED]
INTERVAL: [REDACTED]
- D. [REDACTED]
INTERVAL: [REDACTED]

OTHER CONDITIONS CONTRIBUTING TO DEATH:
HYPERALDOSTERONISM, TYPE 2 DIABETES, OBSTRUCTIVE SLEEP APNEADATE OF INJURY:
HOUR OF INJURY:
INJURY AT WORK:
PLACE OF INJURY:

LOCATION OF INJURY:

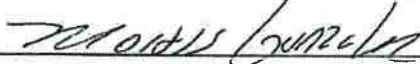
CITY, STATE, ZIP:
COUNTY:
DESCRIBE HOW INJURY OCCURRED:MANNER OF DEATH: NATURAL
AUTOPSY: NOAVAILABLE TO COMPLETE THE CAUSE OF DEATH? NOT APPLICABLE
DID TOBACCO USE CONTRIBUTE TO DEATH? NO
PREGNANCY STATUS, IF FEMALE: NOT APPLICABLECERTIFIER NAME: PATRICK R. WABER, MD
TITLE: PHYSICIANCERTIFIER
ADDRESS: 1008 S. 38TH AVE
CITY, STATE, ZIP: YAKIMA WA 98902
DATE SIGNED: DECEMBER 29, 2015STATUS OF DECEDENT: IF A TRANSPORTATION INJURY:
NOT APPLICABLE

ITEM(S) AMENDED: NONE

NUMBER(S): NONE
DATE(S): NONECASE REFERRED TO ME/CORONER: NO
FILE NUMBER: NOT APPLICABLE
ATTENDING PHYSICIAN:
NOT APPLICABLELOCAL DEPUTY REGISTRAR:
EDIT MALDONADO
DATE RECEIVED: DECEMBER 30, 2015

DOH 01-003 (1/15)

Exhibit 4

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: US Dept of Health & Human Svs - Office of the General Counsel General Law Division - Claims & Employment Law Branch 330 C. Street, SW, Switzer Building, Suite 2600 Washington, DC 20201			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) Estate of Blanca Gonzalez c/o Personal Representative Moises Gonzalez 4840 Lateral A Road Wapato, WA 98951		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT December 27, 2015	7. TIME (A.M. or P.M.)	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) See attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) None					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) None					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. See attached.					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
YVFWC Personnel		518 West First Avenue Toppinish, WA 98948			
Family members		Address to be provided			
12. (See instructions on reverse) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY 10,000,000.00	12c. WRONGFUL DEATH 10,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) 20,000,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) 			13b. Phone number of signatory (509) 952-4704	14. DATE OF CLAIM 8.31.16	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

Pursuant to 42 U.S.C. Section 233, Yakima Valley Farm Workers' Clinic ("YVFWC") is a federally qualified health center which can be sued under the FTCA. Claimant Blanca Gonzalez brought Claim No. 2016-0021 for personal injury, attached. The government has acknowledged receiving the claim on October 13, 2015.

Claimant Blanca Gonzalez died on December 27, 2015 due to injuries related to the claim. Moises Gonzalez has been appointed Personal Representative (PR) of the Estate of Blanca Gonzalez. Under Washington law, only a personal representative may bring an action for wrongful death or survival claims. *Atchison v. Great W. Malting Co.*, 161 Wn.2d 372, 376 (2007); RCW 4.20.010; RCW 4.20.046; RCW 4.20.060.

Moises Gonzalez as PR is filing amended claims to bring wrongful death and survival actions pursuant to RCW 4.20.010, 4.20.020, 4.20.046, and RCW 4.20.060 on behalf of the following statutory beneficiaries of Blanca Gonzalez:

- Moises Gonzalez (adult son of Blanca Gonzalez)
- Rosa Maria Gonzalez (adult daughter of Blanca Gonzalez)
- Javier Gonzalez (husband of Blanca Gonzalez)
- Amfulo Gonzalez (adult son of Blanca Gonzalez)

PR Moises Gonzalez is submitting separate claims for each beneficiary, although the beneficiaries as beneficiaries cannot bring separate actions. This claim on behalf of the Estate of Blanca Gonzalez itself is intended to supplement if necessary, the earlier claims on behalf of individual beneficiaries. As previously claimed, on October 17, 2013 Blanca Gonzalez was seen at YVFWC for rectal pain. She was examined and told she had hemorrhoids. On October 28 she went to the emergency room at Yakima Memorial. She was diagnosed with necrotizing fasciitis. On October 28, Blanca was flown to Harborview Medical Center in Seattle. Blanca had several surgeries. In addition to cleaning out infection and undergoing skin grafts, she had part of her right buttock muscle and leg muscle removed. She had ongoing sepsis and died from related injuries on December 27, 2015.

PR Moises Gonzalez on behalf of beneficiary Moises Gonzalez.

\$5 million in Personal Injury
\$5 million in Wrongful Death
Total \$10 million

Exhibit 5



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel
General Law Division

Claims Office
330 C Street, SW
Switzer Building - Suite 2600
Washington, DC 20201

APR 27 2017

**CERTIFIED-RETURN
RECEIPT REQUESTED**

Luvera Law Firm
701 Fifth Avenue, Suite 6700
Seattle, WA 98104

Re: Administrative Tort Claims of Moises Gonzalez, Individually, and on Behalf
of Javier Gonzalez, Rosa Maria Gonzalez, and Amfulo Gonzalez
Claim Nos. 2016-0475-0478

To Whom It May Concern:

This will acknowledge receipt of your client's administrative tort claims, in the total amount of \$80,000,000.00, which allege, *inter alia*, that on October 17, 2013, unspecified personnel and the Yakima Valley Farm Worker's Clinic, located in Toppinish, WA, negligently diagnosed Blanca Gonzalez with hemorrhoids, resulting in her death on December 27, 2015. Your client's administrative tort claims were received in the Claims Office, Office of the General Counsel, in Washington, DC, on June 17, 2016.

Please reference the assigned claim numbers on all correspondence forwarded to this office.

As all mail delivered to federal government buildings is x-rayed/radiated, and is often damaged in the process, please forward the requested evidence via FedEx, UPS, or DHL, to the address above.

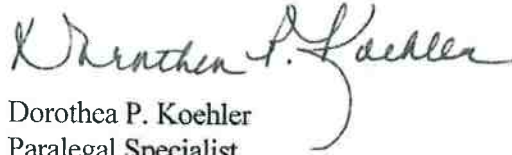
Upon completion of the review process, you will be notified of our determination in writing. However, should the 6-month statute expire before the completion of the review process, your client may consider the claims deemed denied and file suit in the appropriate U.S. District Court (45 CFR 35.2(b) and 28 U.S.C. 2675(a)).

Due to the high volume of claims filed with this office, we are unable to provide information pertinent to the status of your client's claim until completion of the review process.

Page 2

Thank you for your cooperation in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Dorothea P. Koehler". The signature is written in dark ink and is positioned above the printed name and title.

Dorothea P. Koehler
Paralegal Specialist

Exhibit 6



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel
General Law Division

Claims Office
330 C Street, SW
Switzer Building - Suite 2600
Washington, DC 20201

AUG 17 2017

**CERTIFIED-RETURN
RECEIPT REQUESTED**

Andrew Hoyal, Esquire
Luvera Law Firm
701 Fifth Avenue, Suite 6700
Seattle, WA 98104

Re: Administrative Tort Claims of Blanca Gonzalez - Claim No. 2016-0021
Administrative Tort Claims of Moises Gonzalez, Individually, and as Personal
Representative of the Estate of Blanca Gonzalez (Deceased) and on Behalf of
Javier Gonzalez, Rosa Maria Gonzalez, and Amfulo Gonzalez
Claim Nos. 2016-0475-0478

Dear Mr. Hoyal:

On October 13, 2015, you presented an **administrative** tort claim, on **behalf** of Blanca Gonzalez, under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, alleging that unspecified personnel and the Yakima Valley Farm Worker's Clinic, located in Toppinish, Washington, negligently diagnosed her with hemorrhoids. Thereafter, on June 17, 2106, following the death of Blanca Gonzalez, on December 17, 2015, you presented administrative tort claims on behalf of Moises Gonzalez, as Personal Representative of the Estate of Blanca Gonzalez, individually, and on behalf of Javier Gonzalez, Rosa Maria Gonzalez, and Amfulo Gonzalez.

The FTCA authorizes the settlement of any claim of money damages against the United States for, *inter alia*, injury caused by the negligent, or wrongful, act or omission of any employee of the Federal government while acting within the scope of employment. Under the FTCA, said act or omission must be such that the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. § 2672.

This letter constitutes the notice of final determination on your client's administrative claims, as required by 28 U.S.C. §§ 2401(b), 2675(a). Your client's claims are denied.

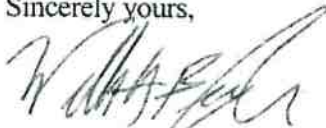
1. file a written request with the agency for reconsideration of the final **determination** denying the claims within six (6) months from the date of mailing of this determination (28 C.F.R. § 14.9); or

Page 2 - Andrew Hoyal, Esquire

2. file suit against the United States in the appropriate federal district court within six (6) months from the date of mailing of this determination (28 U.S.C. § 2401(b)).

In the event your client requests reconsideration, the agency will review the claims within six (6) months from the date the request is received. If the reconsidered claims are denied, your client may file suit within six (6) months from the date of mailing of the final determination.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'William A. Biglow', written over a horizontal line.

William A. Biglow
Deputy Associate General Counsel
Claims and Employment Law Branch